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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,973	02/01/2005	Niall Seamus McDonnell	PU020362	6656

24498 7590 10/17/2006

THOMSON LICENSING INC.  
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EXAMINER
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CHU, GABRIEL L

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/522,973

Applicant(s)

MCDONNELL ET AL.

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060818</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 6-10 rejected under 35 U.S.C. 102(e) as being anticipated by US 20030126315 to Tan et al.** See previous office action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. **Claims 1-5 rejected under 35 U.S.C. 103(a) as being unpatentable over US 20030126315 to Tan et al. in view of “real-time” by Microsoft Computer Dictionary (herein MSCD).** See previous office action.

### ***Allowable Subject Matter***

5. Claim 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form **including all of the limitations of the base claim and any intervening claims**. Referring to claim 11, the prior art does not teach or fairly suggest the step of checking whether cancellation of the outstanding commands occurred, and if not then initiating fail-over recovery of any failed storage system controller.

### ***Response to Arguments***

6. Applicant's arguments filed 24 August 2006 have been fully considered but they are not persuasive. Regarding Applicant's argument that, "At best, Tan et al. suggest that the failover mechanisms operate at the CPU level", Applicant apparently has a fundamentally different interpretation of Tan than Examiner. From the abstract of Tan (with emphasis), "The failover conditions and corresponding actions are stored in a well-defined rule set accessed by the **host bus adapter**. The method continues with performing with the host bus adapter the matched failover action. The method is **transparent to the host computer device**, as the host is not required to participate in the failover processes." This is in direct contradistinction to Applicant's assertion.

7. As referenced by Applicant in paragraph 21 of Tan, "Generally, the failover mechanisms 134, 164 operate to simplify the host CPU 124, 154 support of redundant target controllers 174, 184. As will be discussed with reference to FIG. 4, the failover mechanisms 134, 164 provide management over all target device communication paths including setting initial paths (based on set preferred paths, based on load distribution, and the like) and switching from active to standby controllers when failover conditions are identified. Additional operating systems and OS drivers 126, 156 can readily be added to the system 100 as each will be provided the same redundancy support model and interface by the failover mechanism 134, 164. The host bus adapters 130, 160 further eliminate the need for filter drivers, which have traditionally been difficult to develop causing delays in product completion and shipment." As can readily be interpreted, Tan acts to **simplify** the host CPU by operation of the host bus adapters. It

is the failover mechanisms 134 and 164 of the host bus adapters that provide the management of communication paths and failover. Further, additional OS and drivers can be added to the system, clearly allowing transparency as previously indicated from the abstract.

8. Applicant argues that Applicant's invention performs at the port driver level as opposed to what is disclosed by Tan. Examiner points to Tan, figure 1, elements 130, 134, 160, and 165, and figure 2, elements 130, 134, 204, and 208. Applicant should note that these failover mechanisms are **inside** the host bus adapters. Clearly, this is a functionality of the host bus adapter. Applicant should recall that the function of a host bus adapter is to offload network processing from the host processor; a fact that further corroborates what has already been explicitly stated by Tan from the abstract. Applicant should directly compare these elements to Applicant's own figure 1, elements 14 and 24. Examiner puts forth that if Tan does not operate at the port driver level (or as actually claimed by Applicant, "a lower-level port driver"), then clearly, neither does Applicant. Regardless, Examiner has met the concept and language of the invention.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gabriel L. Chu

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Examiner  
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